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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1991

Addendum

PARAGUAY

[13 January 1993]

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I. INFORMATION OF A GENERAL NATURE

A. Current legal framework

1. The current legal system of the Republic of Paraguay comprises legislation of different ranks which conforms to the guidelines established and enunciated in the fundamental law, namely, the National Constitution.

2. The Constitution in force in Paraguay since 20 June 1992 originates from the decision of the National Congress of the previous year, which ordered the total reform of the Constitution that had been in force since 1967. On 1 December 1991, the elections of members of the Constituent National Convention were held; they were contested by all the political parties and independent groups.

3. The Constituent National Convention was opened in January 1992 and the various commissions were formed. The Constitution was promulgated by the Convention on 20 June 1992; it comprises 291 articles and 20 transitional provisions. In particular, the new Constitution states:

> "Art. 137: The supremacy of the Constitution
>
> The supreme law of the Republic is the Constitution. The Constitution, the international treaties, conventions and agreements approved and ratified, the laws enacted by Congress and other legal provisions of lower rank, sanctioned in consequence, constitute national positive law in the order of priority enunciated.
>
> Any person who tries to modify this order, in a manner other than through the procedures provided for in this Constitution, shall be deemed to have committed the offences that shall be categorized and punished by the law.
>
> This Constitution shall not lose its validity if it is no longer observed as a result of acts of force or if it is repealed by any means other than that for which it provides.
>
> All provisions or acts of an authority at variance with the provisions of this Constitution shall be deemed invalid."

4. It should be emphasized that the conception, discussion and adoption of the new Constitution have taken place in a framework of absolute democracy, on the basis of compared legislation and the country's own experience and requirements. In the area of human rights in particular, the Constitution has incorporated several of the guarantees embodied in the universal human rights. Thus article 4 of the Constitution reads:

> "The right to life is inherent in the human being. His general protection is guaranteed from the time of conception. The death penalty is hereby abolished. The physical and psychological integrity of every person, together with his honour and reputation, shall be protected by the State. The law shall regulate the freedom of individuals to dispose of their own body, but only for scientific or medical purposes."

5. Article 5 reads:

"No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.

Genocide and torture, and the enforced disappearance of persons, abduction and homicide for political reasons, shall be imprescriptible."

6. Article 141 stipulates:

"International treaties which have been validly concluded and approved by act of Congress and whose instruments of ratification have been exchanged or deposited shall form part of domestic law, with the rank determined by article 137."

7. Article 142 reads:

"The international human rights treaties may not be denounced except through the procedures that apply for amendment of this Constitution."

Undoubtedly, this article strengthens the intention to guarantee the full realization of the fundamental rights of man. It should be noted that, since 1989, when there was broad democratic liberalization, Paraguay has ratified numerous treaties relating to human rights. In accordance with the above-mentioned provision, there can be no derogation from these treaties until three years have elapsed and on the initiative of a quarter of the members of one of the Chambers of Congress or 30,000 electors or the President of the Republic. The relevant motion must be approved by an absolute majority of the Chamber of origin.

8. Article 145 of the Constitution reads:

"The Republic of Paraguay, on an equal footing with other States, admits a supranational legal order which guarantees the realization of human rights, peace, justice, cooperation and development in political, economic, social and cultural matters.

These provisions may be adopted only by an absolute majority of each Chamber of Congress."

Consistent with this provision, article 143 reads:

"In its international relations, the Republic of Paraguay accepts international law and conforms to the following principles: ... (5) The international protection of human rights ...".

9. The rights and obligations established in an international agreement which has been duly ratified may be directly invoked in the courts, in accordance with the provisions of the above-mentioned article 137.

10. National positive legislation has not yet incorporated the characterization of the offence of torture in accordance with the definition

contained in article 1 of the Convention. A bill which has been submitted to Congress characterizes torture as follows:

> "Any civil or military authority or official who, before or during the police or judicial investigation and for the purpose of obtaining a confession or testimony or any other evidence or document relating to an obligation or release, even beyond the scope of a police investigation, or to punish him for any reason, subjects a detainee to physical or psychological torture or to cruel, inhuman or degrading treatment which intimidates him or undermines his will shall be liable to four or five years' imprisonment and to general disqualification for up to 10 years."

11. The National Commission on Codification, which is responsible for examining the reform of the Paraguayan Penal Code, has prepared a preliminary draft which will be used as a basis for consideration by the National Congress. Chapter XII of this draft relates to "Offences against human rights". These include offences which acquired great notoriety during the Second World War and under dictatorial Governments, such as torture and genocide. The preamble to the draft states that torture is considered to be physical or psychological violence inflicted on a prisoner or detainee in order to extract a confession or testimony from him or with the aim of intimidating, tormenting or humiliating him. The relevant article (art. 125) of the draft reads:

> "Any public official who, personally or through some other person, inflicts physical or psychological violence on a prisoner or detainee, or who consents to such violence being inflicted by another person for the purpose of obtaining a confession or testimony or in order to intimidate, punish, torment or humiliate him, or who subjects him to inhuman or degrading treatment, shall be liable to three to eight years' imprisonment. The same penalty shall be imposed on any person who, while not a public official, inflicts violence or the aforesaid treatment."

B. The National Constitution

12. The National Constitution was adopted and promulgated on 20 June 1992. It established the general context in which the State must conduct its activities and contains specific guarantees for the inhabitants of the country. For example:

> "Chap. II, art. 9. Every person shall have the right to protection of his freedom and security.
>
> No person shall be obliged to do what the law does not order or be deprived of what it does not prohibit."
>
> "Art. 11. No person shall be deprived of his physical freedom or tried except for the reasons and in the circumstances established by this Constitution and the other laws."
>
> "Art. 12. No person shall be arrested or detained without a written warrant from a competent authority, unless he is caught in the act of

committing an offence which carries a custodial sentence. Any person arrested shall be entitled to the following:

(1) He shall be informed, at the time of the arrest, of the reason for it, of his right to remain silent and of his right to be assisted by a counsel of his choice. In making the arrest, the officer concerned is required to display the written warrant ordering the arrest;

(2) The arrest shall immediately be reported to the relatives of the person arrested or to persons specified by him;

(3) He shall be kept freely available for communication, save in exceptional circumstances when incommunicado detention shall be provided for by means of a competent judicial order; incommunication shall not apply to his defence counsel, and in no circumstances may the time-limit prescribed by law be exceeded;

(4) He shall have the services of an interpreter, if necessary; and

(5) He shall, within a period of not more than 24 hours, be placed at the disposal of the competent judge, in order that the latter may order legally appropriate action."

13. The subsequent articles guarantee procedural rights. They relate to: restrictions on making a statement; pre-trial detention; the purpose of the penalties; the imprisonment of persons; the public nature of proceedings; and proof.

14. The guarantees for the inhabitants of the country are based on fundamental principles established in the legislation of all democratic countries. In Paraguay, which has a Constitution entirely based on democratic principles, the guarantees have been incorporated in various articles of the Constitution and all legislation thus has to conform to the principles established in it.

15. An interesting contribution of the new Constitution is the power which it grants to both Chambers of Congress to set up investigatory commissions. At present a bicameral commission is already working on the investigation of unlawful acts. The Commission has so far received numerous complaints, including some of alleged torture. It is working in close conjunction with the judiciary. This joint work is being followed by all the media - radio, television, newspapers - and by this means public opinion is kept constantly informed. Its function is very positive.

16. The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the General Assembly of the United Nations, was ratified by Paraguay in 1989. It entered into force three years ago and its incorporation into national legislation is in the course of preparation and adoption.

C. Paraguayan Penal Code

17. Briefly, the Paraguayan Penal Code has the following background. The course for which the country opted after the end of the war of the Triple Alliance (1864-1870) was the adoption of foreign, and especially Argentine, legal instruments. In 1903, the Government considered the Argentine text to be very backward and deficient for the times and ordered a new Penal Code to be drafted, entrusting this work to Mr. Teodosio González, an eminent jurist and academic. This text was enacted in 1910 and subsequently underwent some amendment. Since 1989 numerous amendments have been introduced to bring the text into line with national reality.

18. The system adopted by the Code is the traditional division into a general part and a special part. Following the practices of the time, the contents are divided into two books. The first, the general part, contains the general principles of the Code: the rules of interpretation and application of penal law, the rules relating to persons responsible for offences, delinquency and accessories, the penalties established and the rules for their application, civil liability deriving from serious and minor offences, and lastly the cases in which penalties may be suspended or extinguished. In the second book, which contains the special part, there is a list of acts which are specifically and expressly characterized as serious or minor offences, and the penalties for each are laid down.

D. Acts punishable in domestic law in connection with the various offences which are applicable in cases of torture

19. The acts punished and the corresponding penalties prescribed in the Penal Code are as follows:

(a) Abuse of authority:

Art. 174. "Any public official who, abusing his office, perpetrates or orders, in violation of the rights of third parties, any arbitrary act or unnecessary or unlawful harshness or coercion shall be liable, if the act does not constitute a more serious offence, to two to six months' imprisonment. If the offence is committed out of vengeance, the penalty shall be doubled".

(b) Criminal association:

Art. 37. "Any persons who associate or conspire to commit an offence shall be deemed to be mutual abettors. Consequently, all the associates, whether or not they took a direct part in the perpetration of the punishable act, shall be held liable for the offence committed, as principals".

(c) Aggravating causes of criminal liability:

Art. 31. "The following are circumstances aggravating criminal liability:

Unnecessary harm: Deliberately increasing the effects of the offence by causing unnecessary harm in its execution.

Abuse: Abusing superiority in terms of sex, age, strength or other circumstances unfavourable to the victim of the offence.

Violation of duties: When the guilty party has more numerous and important reasons for observing the law or if the duties violated are more imperative and the guilty party is able clearly to understand those reasons and duties.

Perversity-danger: When the desires or passions that impelled the perpetrator are unusually or exceptionally perverted or dangerous".

(d) Offences against the constitutional guarantees:

Art. 274. "Any person who, in cases other than those provided for by law or in breach of the prohibition established by law, arrests, detains or abducts another person or in some other way deprives him of his freedom shall be liable to three to six months' imprisonment".

Art. 275. "The penalty established in the preceding article shall be increased from 12 to 18 months:

(1) If the offence was committed with the use of violence, intimidation or ill-treatment or against the person of a child under the age of 12;

(2) If it was committed by a public official or by some other person lawfully authorized to perform a public service".

Art 278. "Any public or military official who, regardless of his degree of responsibility for custody of the prison, admits to it some other person without an order from the competent authority or refuses to obey the release order issued by that authority shall be liable to the penalty established in article 274 and to suspension for up to six months".

(e) Offences against the life, physical integrity and health of persons:

Art. 334. Homicide. "Any person who, with criminal intent, takes the life of another human being over the age of three days shall be liable to 6 to 12 years' imprisonment".

Very special aggravating circumstances

Art. 337. "The penalty shall be 15 to 25 years' imprisonment if the homicide is committed:

(1) Against the person of the spouse, brothers or sisters, or legitimate or natural ascendant or descendant relatives;

(2) With breach of trust;

(3) With cruelty;

(4) Through instincts of brutal ferocity alone."

Injuries

Art. 341. "Any person who, without intent to kill, causes another person physical injury or harms his health shall be liable to:

(1) Two to four years' imprisonment if the act has caused permanent damage to a sense or organ, a permanent impediment of speech, a permanent deformation of the face, or danger of death;

(2) Two to six years' imprisonment if the act has caused mental or physical illness which is definitely or probably incurable, or the loss or non-use of a sense or an important member or organ.

Any other injuries shall carry a penalty of imprisonment for three to seven days for every day of sickness or inability to perform daily duties caused to the patient by the injury in question, this penalty never to exceed five years".

E. Principles underlying the prison system

20. The legal provisions regulating treatment and life in prisons are contained in Act No. 210/70. The principal purpose of the Paraguayan prison system is to keep in custody untried prisoners while their alleged involvement in an offence is being investigated and also persons who have been sentenced to imprisonment.

21. In connection with practices in prisons, it may be said that the purpose of deprivation of freedom is simply to ensure the presence of the untried prisoner and to separate him from society if he has been convicted.

22. The new Constitution, to which the Prison Act is to be adapted, contains the following provisions:

Art. 20. The purpose of the penalties. "The purpose of custodial penalties shall be to rehabilitate convicted prisoners and to protect society.

The penalties of confiscation of property and exile are prohibited".

23. Article 3 of Act No. 210/70 states: "Treatment with a view to the social rehabilitation of the prisoner shall be comprehensive and shall be of an educational, spiritual, therapeutic, assistance-oriented and disciplinary character".

24. Article 4 states:

> "The prisoner shall be required to comply with the prison regime to which he is subject. This regime shall be free of any violence, torture, ill-treatment, or acts or procedures which involve suffering, humilitation or taunting of the prisoner. Any prison officer who orders, perpetrates or tolerates such excesses shall be held responsible and shall be liable to the relevant provisions of the Penal Code, without prejudice to any disciplinary penalties that may be applicable".

25. Article 13 stipulates:

"In prison establishments account shall be taken of the requirements of hygiene as regards space, light, ventilation and sanitary facilities, in accordance with the standards of preventive medicine for the purposes of the preservation and improvement of the physical or mental health of the prisoner".

F. Competent authority

26. The questions dealt with in the Convention may be included within the competence or jurisdiction of various branches of State authority:

(1) Judiciary:

(a) Ordinary criminal jurisdiction;

(b) Correctional jurisdiction;

(2) Executive:

(a) Administrative remedies provided for in the regulations of the Capital Police, Ministry of the Interior, through the government delegations and National Prison Authority;

(b) Administrative formalities relating to extradition (Ministry of Foreign Affairs and Ministry of Justice and Labour and its Directorate-General for Human Rights);

(3) Legislature:

Congressional Commission on Human Rights.

Remedies available under current legislation to a person whose rights have been violated

27. Article 88 of the Code of Criminal Procedure states:

"Any person with legal capacity who witnesses the perpetration of any offence that gives rise to the public right of action or who, by any other means, has knowledge of the perpetration of such an offence may report it to:

(1) The judge competent for the pre-trial proceedings;

(2) The justices of the peace in rural areas;

(3) Officials of the Public Prosecutor's Department;

(4) Political leaders or senior police officers".

28. Article 115 of the Code of Criminal Procedure stipulates:

"Any judges who receive a report conforming to all the requirements set forth in this chapter shall be obliged to initiate any measures necessary to investigate the act and the alleged offenders consistent with the provisions established in this Code.

When the report is lodged with officials of the Public Prosecutor's Department, the latter shall immediately transmit the report to the judge, who shall initiate the pre-trial proceedings.

When the report is made to political leaders or senior police officers, they shall follow the same course as that specified in the preceding paragraph".

29. In addition, under the Juvenile Code (Act No. 903/81), reports may be made to the Juvenile Court judge of first instance, in order that he may proceed with the investigation of acts or omissions provided for and penalized under the legislation in force in cases where they were perpetrated by juveniles under the age of 14 and take action on reports relating to the ill-treatment, punishment or improper treatment of persons under the age of 20 and, in general, juveniles at risk.

The office of Defender of the People

30. Among the most important human rights institutions established and incorporated in the new Paraguayan Constitution is undoubtedly that provided for in Chapter IV, in which the office of "Defender of the People" is established. Thus article 276 of the Constitution reads: "The Defender of the People shall be a parliamentary commissioner whose duties are to safeguard human rights, channel demands by the people and protect community interests. In no circumstances shall he have a judicial function or executive competence".

31. Article 277 reads: "Independence, appointment and removal. The Defender of the People shall enjoy independence and irremovability. He shall be appointed by a two-thirds majority of the Chamber of Deputies from a list of three candidates proposed by the Senate; his term of office shall be five years, concurrent with the term of Congress. He may be re-elected. He may also be removed from office for deficient performance of his duties, by means of the impeachment proceedings provided for in this Constitution".

32. Article 279 enumerates the duties and responsibilities of the Defender of the People, which are:

"(i) To receive and investigate reports, complaints and claims concerning human rights violations and other acts provided for in this Constitution and the other laws;

(ii) To demand from the authorities at the various levels, including the police forces and the security agencies in general, information for the purposes of the more effective discharge of his duties, information concerning

which no reservation may be expressed. He shall have access to the places where the acts in question were reported to have taken place. He shall also be competent to act ex officio;

(iii) To issue a public reprimand for acts or conduct at variance with human rights;

(iv) To report annually on his activities to the Chambers of Congress;

(v) To prepare and publish reports on human rights situations which, in his opinion, require prompt public attention; and

(vi) Any other public duties and responsibilities that may be established by law."

33. Undoubtedly, the Defender of the People, or ombudsman, represents one of the most effective institutions in public law for safeguarding the rights and guarantees of inhabitants. In order to achieve transparency and objectivity in his functions, in keeping with the experience of other peoples, it is absolutely essential that the ombudsman should be a person who represents the people, independent of political factions or parties, and a zealous custodian of the rights of the individual.

34. In the chapter entitled "Constitutional guarantees", the institution of habeas corpus is also established, in the following terms:

> Art. 133. "This guarantee may be applied for by the person concerned, personally or through some other person without need for power of attorney by any evidentiary means, to any judge of first instance of the judicial district in question.
>
> Habeas corpus may:
>
> (i) Be preventive: under which, any person who is on the point of being unlawfully deprived of his physical freedom may apply for an examination of the legitimacy of the circumstances which, in his opinion, are threatening his freedom, together with an order to terminate the restrictions on his freedom;
>
> (ii) Provide redress: under which, any person who has been unlawfully deprived of his freedom may apply for rectification of the circumstances in question. The judge shall summon the detainee, and call for a report by the public or private official who detained him, within 24 hours of submission of the application. If the recipient of the judge's order does not take the action called for, the judge shall visit the place where the detainee is being held and shall there make a decision on the merits of the case and order his immediate release, as if the summons had been complied with and the report had been submitted.
>
> If there are no legal grounds for depriving the detainee of his freedom, the judge shall order the release immediately; if there is an order in writing from a judicial authority, he shall transmit the record to the official who ordered the detention.

(iii) Be generic: under which, application may be made for the rectification of circumstances which, not being provided for in the two previous cases, restrict liberty or threaten security of person. In addition, this guarantee may be applied for in cases of physical, psychological or moral violence which worsen the conditions of persons lawfully deprived of their freedom.

The law shall regulate the various habeas corpus procedures, which shall be valid even during a state of emergency. The proceeding shall be brief, summary and free of charge, and may be initiated ex officio".

Civil liability arising from the offence

35. The Code of Criminal Procedure states:

Art. 126. "Any person criminally liable for a penal offence also bears civil liability".

Art. 130. "Civil liability comprises:

(i) The return of the object in question or reimbursement;

(ii) The repair of damage caused;

(iii) Compensation for loss;

(iv) Trial costs".

36. The civil action must be instituted in a civil court and, for the purposes of a final decision, is conditional upon a coercive judgement, enforceable in the criminal courts. This action may be instituted by the principal victim of the offence. If he is not in a position to initiate the action, this shall be done by the heirs or, in cases involving minors, their legal representatives.

Protection of the rights established by the various international human rights instruments

37. As we were saying, the rights provided for in the various human rights instruments are protected in the National Constitution, part II, title I, Chapter II, entitled "International relations". In addition, national positive law establishes respect for life, and even though in domestic law there is not yet any independent reference to the offence of torture, a number of acts described in the Convention are covered in domestic law relating to offences in general and carry severe penalties.

38. In the so-called Mario Schaerer Prono case heard by Judge Luis María Benítez Riera in the Second Rota Court of First Instance, the persons found guilty of homicide in the Police Investigations Department were sentenced to 25 years' imprisonment, because the evidence produced during the trial demonstrated that death occurred as a result of multiple injuries caused by torture in police premises.

39. The whole edifice of the judiciary, from the magistrates' courts up to the Supreme Court of Justice and the Public Prosecutor's Department, within the context of the responsibilities conferred on them in accordance with positive legislation, is concerned with human rights matters. The Public Prosecutor's Department, in particular, has placed special emphasis on ensuring that the constitutional guarantees are fulfilled and, to this end, it promotes the various proceedings on reports of human rights violations that are currently being dealt with in the various courts. For the same purpose, the Office of the Attorney General of the State has set up a department with the special responsibility of dealing with human rights matters.

II. INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Introduction

40. It should be pointed out that Paraguay is undergoing a period of far-reaching change and, in these circumstances, the provisions of domestic legislation are being brought into line with the various conventions that have been ratified by the Paraguayan State. The new Constitution establishes rights and guarantees which protect all inhabitants of the country. It is a concern of the State to ensure the strict observance of these guarantees, which have been enunciated earlier.

41. The democracy which the country has experienced since 2 February 1989 was preceded by various situations in which respect for human rights was unfortunately flouted. The violation of these rights was the norm, especially in police circles, where torture was the only form of questioning.

42. It should be observed at present that, with the agreement of all police authorities, far-reaching changes have been made in the various procedures for the prevention of crimes and the procedure for taking persons into custody. The requirements enunciated in the Constitution for the detention of persons are complied with.

43. Police buildings have been upgraded, with separate facilities for detainees, juveniles, women, etc. In the training of police personnel, emphasis is laid on respect for human dignity. The function of the police is limited to safeguarding law and order and the free exercise of the rights and guarantees of inhabitants; procedures which violate fundamental human rights have been eliminated.

44. It may be said today that, in the event of a report of violations by any authority, the necessary corrective measures are adopted immediately. In the police and in the judiciary, the public find due protection, and officials ensure that their acts are in conformity with the legal provisions imposed from the Constitution down. This work is coordinated between the police, the judiciary and the Public Prosecutor's Department. Coordination is growing stronger every day, in order to ensure that every proceeding is in conformity with the provisions which guarantee human rights.

Article 2

45. The legal provision punishing torture, consistent with article 2 of the Convention, is contained in the Constitution itself and is specifically embodies in the proposed reform of the Penal Code. The Constitution also stipulates that statutory limitations are not applicable to the offence of torture.

46. This provision of the Constitution originates from the Universal Declaration of Human Rights and the Pact of San José, Costa Rica.

47. Making penalties more human has been one of the achievements of human rights doctrine, and this type of provision protects human dignity while setting a limit on the exercise of public authority.

48. The country's courts are still in the process of studying numerous proposals for prescription of proceedings for offences involving, inter alia, torture, under the previous legislation, which did not have similar provisions. Although the Supreme Court of Justice has not yet issued a decision on this matter, it should be pointed out that some ordinary and appeal courts in Paraguay argue that statutory limitations should begin from the fall of the dictatorship, since during the dictatorship any judicial or extrajudicial claim that a person had been the victim of an act by any authority would have been futile.

49. When complaints are filed against police and prison institutions for offences involving torture, the offences are immediately investigated on the initiative of the Public Prosecutor's Department or the sitting judge. Judicial proceedings were recently brought against the Director of National Prisons and several prison officials, who had been accused of physical ill-treatment by numerous prisoners. Arrest warrants were issued against the Director himself and several warders. The Administration also decided that the prison system would be reorganized and new officials appointed.

50. Article 208, in title III of the Constitution makes provision for a state of emergency and fully clarifies its scope in the following terms:

> "In the event of an international armed conflict, whether or not formally declared, or serious internal disturbance placing in imminent danger the authority of this Constitution or the regular functioning of the organs established by it, Congress or the Executive may declare a state of emergency in part or all of the national territory, for a maximum period of 60 days. If the declaration is made by the Executive, the measure shall be approved or rejected by Congress within a period of 48 hours. The 60-day limit may be extended for successive periods of up to 30 days, for which an absolute majority of both Chambers shall be required."

51. When Parliament is in recess, the Executive may declare a state of emergency for a single period of no more than 30 days, but must within eight days submit the declaration for approval or rejection by Congress, which will be convened de jure for a special session solely for that purpose. The decree or law declaring the state of emergency must set forth the grounds and facts

on which it is based, the length of time it will remain in force, the territory affected and the rights that it restricts.

52. While the state of emergency is in force, the Executive may order the following measures only, by decree and on a case-by-case basis: the detention of persons suspected of having participated in any acts of this nature, their transfer from one place to another within the Republic, and the prohibition or restriction of public meetings and demonstrations.

53. In all cases, suspects will have the option of leaving the country.

54. The Executive will immediately transmit to the Supreme Court of Justice the names of persons detained under the state of emergency and inform it where they are being held or have been taken, in order that a judicial inspection may be possible. Persons detained under the state of emergency must be held in clean and healthy facilities not intended for ordinary offenders or must remain under house arrest. Transfers must always be to clean and inhabited places.

55. It is important to stress that a state of emergency may in no circumstances interrupt the functioning of the powers of the States, the applicability of the Constitution or specifically habeas corpus. In other words, even in exceptional circumstances, the right to security of person is inviolable and the state of siege may not be invoked as an argument for evading responsibility for acts of torture.

56. Congress may at any time, by an absolute majority, order the state of emergency to be lifted if it considers that the reasons for its declaration have ceased.

57. Once the state of emergency has ended, the Executive is required to inform Congress, within a period of not more than five days, of the action that has been taken while the state of emergency was in force.

58. It should be noted that Acts Nos. 294 and 209 (both now repealed), which were in force during the dictatorship, were enforced improperly, to the detriment of personal freedom, since many persons were detained for allegedly violating them.

59. The excesses in the use of these laws were also harmful for personal freedom, because of the abuses by the authorities in office at the time and the unlimited power of the Executive to restrict the freedom of the inhabitants.

60. The doctrine of due obedience had been used to justify abuse of power by the authorities. Article 106 of the Constitution, entitled "The responsibility of officials and public employees", deals with such abuse in the following terms:

> "No official or public employee shall be exempt from responsibility. In cases of violations, offences or breaches committed by them in the performance of their duties, they shall be personally

responsible, without prejudice to the subsidiary responsibility of the State. The State shall be entitled to demand the reimbursement of any sums it has had to pay in that connection."

61. Article 21 of the Penal Code stipulates:

"The following persons shall also be exempt from penalties:

"...

(6) Any person who acts out of due obedience if the violation ordered is only an abuse, excess or violation of duties related to the functions of the person giving the order and the person receiving the order could not easily perceive that the act in question was an offence ...".

This exemption from penalties requires specific limitations, and article 174 of the Penal Code therefore stipulates:

"Any public official who exceeds the authority of his position by committing or ordering, against the rights of third parties, any arbitrary act or unnecessary or illegal harshness or pressure shall be liable to imprisonment for two to six months if the act in question does not constitute a more serious offence. If the act was committed out of vengeance, the penalty shall be doubled."

62. When due obedience is involved, it must accordingly not be accompanied by any abuse of authority or excesses, in order that those invoking may be exempt from criminal responsibility.

Article 3

63. The rules of the Convention prohibit the extradition of a person to a country where he may be considered to be in danger of being tortured. Since this eventuality is not provided for in specific provisions of extradition treaties, it is governed by the provisions of the Convention. Article 43 of the Constitution states: "No person who has been granted political asylum shall be forcibly transported to a country whose authorities will persecute him."

64. Extradition is also governed by the Treaty of Montevideo, according to which it is subject to specific provisions; it is obviously inappropriate when the person whose extradition is requested would have to appear before an emergency court or tribunal.

65. In such cases consideration has to be given to the political condition or situation of the country requesting the extradition and that of the person whose extradition is being requested.

66. In a democratic system of the kind which is widespread throughout the world, the appropriateness and applicability of this aspect of the Convention are affected by its democratic nature, which acts as a guarantee.

Article 4

67. Article 4 of the Constitution stipulates: "Every person shall be protected by the State with regard to his physical and mental integrity, and his honour and reputation. The law shall govern the freedom of individuals to dispose of their own body, solely for scientific or medical purposes". This provision of the Constitution is in keeping with the explicit prohibition of torture contained in article 5, and the non-applicability of statutory limitations to this offence.

68. As stated in this report, the categorization of this offence in the Penal Code will come into full effect with the entry into force of draft article 215, which stipulates:

> "Any public official who, personally or through some other person, inflicts physical or psychological violence on a prisoner or detainee, or who consents to such violence being inflicted by another person, for the purpose of obtaining a confession or testimony or in order to intimidate, punish, torment or humiliate him, or who subjects him to inhuman or degrading treatment, shall be liable to three to eight years' imprisonment. The same penalty shall be imposed on any person who, while not a public official, inflicts violence or the aforesaid treatment.
>
> "If the violence or ill-treatment inflicted on the victim results in serious injury or death, the corresponding penalties shall be added to those specified above. If the victim commits suicide, the guilty party shall be liable to six to ten years' imprisonment."

69. Even though the offence of torture is not yet categorized as such, the majority of the acts constituting torture (abuse of authority, unlawful deprivation of liberty, bodily injury, abduction) are provided for in the positive legislation in force.

Article 5

70. Article 8 of the Paraguayan Penal Code stipulates: "Offences committed in the territory of the Republic shall be punished in accordance with this Code, irrespective of whether the offenders are nationals or aliens ...".

71. The Aeronautical Code (Act No. 469/57) stipulates:

> "Art. 156. Acts perpetrated and events occurring on board aircraft in flight over, or stationary on, Paraguayan territory, or through their action affecting persons or objects outside them but within the national territory shall be governed by the laws of the Paraguayan State and shall be tried by its courts.
>
> "Art. 157.
>
> "(1) Acts perpetrated and events occurring on board Paraguayan aircraft over the high seas or when it is not possible to determine over which territory the aircraft was flying at the time when the act was

perpetrated or the event occurred, shall also be governed by the laws of the Paraguayan State and shall be tried by its courts.

"(2) If the acts were perpetrated or the events occurred on board a Paraguayan aircraft flying over foreign territory, they shall fall within the competence of the Paraguayan courts, except in cases where a legitimate interest has been jeopardized."

72. The offence of torture must be punished in accordance with the international consensus embodied in the rules of the Convention.

73. In certain cases the Convention may take precedence over domestic legislation, which prohibits the extradition of a Paraguayan citizen at the request of a foreign Government unless it is expressly provided for in a treaty in force. If a Paraguayan is subjected to torture, the national Government, on learning of the case, will request the extradition of the perpetrator or perpetrators from the place or country in which he is present. If the country to which the extradition request has been made does not grant it on the grounds that it is not appropriate, that country must try the case in its national courts. The diplomatic channel is an expeditious means of promoting an investigation when such circumstances come to its attention.

74. Criminal legislation in force in Paraguay provides the possibility for a person being tried or already convicted to request extradition. The above-mentioned Act stipulates that the judge hearing the case shall, ex officio or at the request of a party, in a legally substantiated decision, grant permission for the extradition to be requested as soon as it becomes appropriate.

75. In specific cases, and in accordance with the provisions of the Convention, the Paraguayan State will take an interest in any citizen who has committed the offence of torture. It must request extradition or trial through the appropriate channel. If extradition is not considered appropriate, the proceedings against the offender will remain open and he will be tried as soon as he sets foot on Paraguayan territory.

76. The cases described in article 5, paragraph 1 (b) and (c), are not yet provided for in Paraguayan legislation, which has until now limited the scope of its territorial application to the cases described above.

Article 6

77. Article 610 of the Code of Criminal Procedure and its related provisions stipulate that in emergency cases the courts of the Republic may order the provisional arrest of an alien at the direct request of the judicial authorities of a country linked to the Republic through extradition treaties, provided that reference is made to the existence of a judgement or arrest warrant and the nature of the offence in question is clearly specified.

78. Similarly, article 612 of the Code of Criminal Procedure stipulates that the provisional arrest of an alien may also be ordered at the request of a member of a diplomatic mission, until such time as the documents necessary for

submitting the extradition request arrive; in such cases the provisions of the preceding articles will be applicable.

79. In conformity with this article of the Convention, a prisoner must be given every facility to communicate immediately with the nearest competent representative of the State of which he is a national, and the Paraguayan State is obliged to grant him this right, without prejudice to the obligation to inform the State of which the detainee is a national of the grounds for his detention.

Article 7

80. In both this case and that covered by the following article, and in general in all cases where there is no other treaty on the subject, the provisions of the Convention apply in full since, besides being an international instrument, it is also a rule of domestic law and must be enforced by judges.

81. In conformity with the provisions of the Convention, the State may proceed to investigate the act and communicate its findings without delay, provided they do not indicate that the defendant should be extradited.

82. When the Paraguayan State decides to try a defendant for acts of torture, it must guarantee him due process, in accordance with the procedural rules in force in the country, i.e. he must have the right to be informed of the nature of the charges against him, to communicate with his relatives, to the assistance of defence counsel, to be presumed innocent, to communicate freely, etc.

83. It is important to point out that, as regards extradition, the Treaty of Montevideo contains no provision that is incompatible with the provisions of the Convention; consequently, if a request is received for the extradition of a person who has committed torture, the substantive and procedural rules applied by the Paraguayan courts will essentially be the same as those of the Convention.

Article 8

84. The general principle is that offences of torture, like other related offences, are considered to be extremely serious and therefore extraditable. The legislation in force contains no provision excluding torture as an extraditable offence. Thus, this article of the Convention is fully applicable as long as the positive regulations remain in force and set the criteria governing the action of the Paraguayan system of justice in any case involving an extradition request. This means that there is no legal rule deriving from a previous treaty that is at variance with the provisions of the Convention. On the contrary, any lacunae in previous legislation were filled by the entry into force of the Convention, which is thus fully applicable throughout the national territory.

85. What this means specifically is that, if a person who has committed the offence of torture is under the jurisdiction of the Paraguayan State and his extradition is requested by another State party to the Convention, he must be

either extradited or tried by the national courts. In both cases, the rules and procedures established in the Convention and national legislation would have to be strictly complied with.

Article 9

86. The Paraguayan State supports the principle of international reciprocity and accordingly assists nations which address to it requests for evidence relevant to the investigation of cases of torture or other human rights offences.

87. When the requirements have been fulfilled in extradition cases, the person who is the subject of the request is extradited, in accordance with the principle of reciprocity. Already prior to the entry into force of the Convention for Paraguay, and pursuant to the principle of reciprocity, in 1989 we extradited, at the request of the Argentine courts, Commissioner Samuel Miara, whose record indicated that he had violated human rights standards in his country. The Supreme Court of Justice held that: "The Judge of First Instance also rationally based his opinion on the non-existence of political connotations in the extradition in question. He made a correct analysis of compliance with the procedural formalities required for this purpose, without finding in them any pressure of that nature ...".

88. Thus, on the basis of the provisions of the Treaty of Montevideo, which has been acceded to by the majority of Latin American countries, the Paraguayan judicial authorities extradited the above-mentioned Argentine citizen, against whom complaints of human rights violations had been lodged.

Article 10

89. Since the establishment of democracy in Paraguay in February 1989, far-reaching changes have taken place, with priority attention being given to human rights and guarantees and the full implementation of the rule of law. By way of example we would mention the cases of the complaints of violations of human rights which are being dealt with in the various courts, in the full conviction that the constituted authorities should give effect to the prohibition of harassment of the human personality.

90. In the cases of torture referred to, such as those which occurred in the National Prison, in instituting criminal proceedings against the perpetrators of this brutality the Public Prosecutor's Department, together with the courts, have taken immediate action to investigate the acts deemed to be criminal (specifically, acts of torture).

91. By this means we have complied strictly with the Penal Code and the specific provisions of article 4 of the Prisons Act (No. 210/70).

92. In parallel with these achievements, the Paraguayan Government has established the Directorate-General for Human Rights, subordinate to the Office of the Under-Secretary of State for Justice within the Ministry of Justice and Labour, which is responsible for dealing with and publicizing

fundamental rights. In various training seminars for military and police personnel, stress is laid on respect for the human person and his inalienable rights.

93. Within the judiciary, numerous bodies, with the participation of the United Nations and the assistance of eminent jurists and other members of the legal profession, have organized lectures and seminars for judges, judicial officials and police officers. Some of the most important of these events are listed below:

(a) Panel debate on "Democracy and constitutional reform". Special guest: Bidart Campos;

(b) Seminar on "The Public Prosecutor's Department". Panel of special guests: Adolfo Alvarado Velloso, Adolfo Saúl Beraja, José Ignacio Kafferata Nores, Federico Dominguez, Elpidio R. Monzón, Hector Carlos Superdi, Andres D'Allessio and Wolfgang Shone;

(c) "Structure and function of the judiciary and the Public Prosecutor's Department";

(d) "Doctrine and case-law in the area of human rights". Speaker: Andrés D'Allessio;

(e) "Procedures in the international legal institutions";

(f) Launching of the National Campaign for the Prevention of Physical and Sexual Abuse;

(g) "Administration of justice and criminal administration". Seminar attended by 22 police superintendents and 250 other persons, including judges, attorneys and procurators;

(h) "Judicial college - penal reform", with Wolfgang Shone;

(i) First Congress of the Public Prosecutor's Department;

(j) Seminar on human rights, sponsored by the Association of Magistrates, the United Nations and the Ministry of Justice and Labour;

(k) Seminar on human rights, held in the Ministry of Justice and Labour, and attended by judicial officials, police officers, educators and representatives of non-governmental organizations.

94. It should also be mentioned that the Paraguayan police have established a Family Department to deal with cases relating to human rights at the family level.

95. The activities of the Directorate-General for Human Rights have included:

(a) First Seminar on the implementation of the international human rights instruments and the administration of justice, for officials, judges and law-enforcement personnel;

(b) Training course on human rights, held on the premises of the Directorate-General;

(c) Seminar commemorating the fortieth anniversary of the Geneva Convention relating to the Status of Refugees, organized jointly by the Paraguayan Church Committee for Emergency Aid and the local representative of UNHCR, and held at the UNDP office;

(d) Interdisciplinary course on human rights, at the headquarters of the Directorate-General for Human Rights;

(e) International symposium entitled "Comparative bases for a constitutional reform", organized jointly by the Directorate-General for Human Rights, UNDP and the United Nations Centre for Human Rights;

(f) Seminar on "Influence and current prospects of international humanitarian law in Paraguay", organized jointly by the Directorate-General for Human Rights and the Regional Delegation of the International Committee of the Red Cross for Paraguay, Argentina, Bolivia, Chile and Uruguay;

(g) Compilation of a comparative analysis of the International Covenant on Civil and Political Rights and the American Convention on Human Rights (Pact of San José) and a summary of the content of the International Covenant on Economic, Social and Cultural Rights, and submission of an opinion (of the Directorate-General for Human Rights) to the Office of the Under-Secretary of State recommending ratification of both Covenants;

(h) Within the context of the promotion and dissemination of the Convention on the Rights of the Child, posters, leaflets and cartoons relating to all the articles of the Convention have been produced jointly by the Directorate-General for Human Rights and the Centre for the Defence of the Child, under the auspices of UNICEF.

96. In addition, with the joint participation of the Directorate for Welfare and Social Assistance (DIBEN) and the Ministry of Education and Worship, the first "childrens elections" were held in October 1992, with the aim of promoting and inculcating respect for the rights of children.

97. The following seminars have also been held: the International Seminar on the Administration of Justice and Criminal Investigation, organized jointly by the Directorate-General for Human Rights, UNDP and the State Attorney-General's Office; the first Seminar on human rights education, organized jointly by the Directorate-General for Human Rights and the Inter-American Institute of Human Rights, based in Costa Rica, under the auspices of the Friedrich Naumann Stiftung Foundation; and the Seminar on refugee law, international humanitarian law and human rights, held in the auditorium of the Paraguayan Red Cross.

98. We organized the visit by Mr. Klaes Ekludh, the Swedish parliamentary ombudsman, who met members of the Supreme Court of Justice, the State Attorney General, the Minister of Justice and Labour, the members of the Magistrates' Association and other senior officials.

99. The National University of Asunción has incorporated the subject of fundamental rights within the programme of studies, thereby promoting training in and knowledge of all matters relating to this subject.

100. In several educational institutes in Paraguay, working groups, comprising teachers and pupils, are being formed.

101. In political and judicial activities, the total transparency of proceedings is ensured through the freedom of the press which exists in Paraguay and, as has already been stated, from the Attorney-General's Office itself constant encouragement has been given to judicial investigations and the institution of proceedings when any case has come to light. For this purpose, the competent judges have been asked to take such measures as they consider necessary to guarantee to the inhabitants of the country the full enjoyment of their fundamental rights and to eradicate torture.

Article 11

102. Whenever there are reasonable grounds for believing that a torture-related offence has been committed, the competent authorities will investigate the matter. Depending on the categorization of the offence, the Code of Criminal Procedure requires the judicial and police authorities and the Public Prosecutor's Department to initiate immediate measures. The specific constitutional provision which prohibits torture establishes as invalid any questioning in which this practice was used; the methods used must be appropriate to procedures for the investigation of any criminal act. In the past judicial investigations originated in physical ill-treatment in police and prison establishments, a practice which has become public knowledge.

103. In the case of the police, it has been reported that torture and cruel treatment of detainees have been terminated and that the apparatus or instruments that were used under the regime deposed in 1989 have consequently been dismantled. Article 4 of the Prisons Act (No. 210) provides that a prisoner shall not be treated with violence or brutality, or any act or procedure which involves suffering, humiliation or physical harassment.

104. The reform of the Code of Criminal Procedure is also under study. Consideration is being given to a number of provisions to protect persons deprived of their liberty, in an effort to improve procedure through observance of what are considered to be minimum rules to safeguard the physical integrity of any pre-trial or convicted prisoner.

105. The State Attorney-General's Office has arranged for weekly visits to the National Prison by procurators and attorneys, who assist the prisoners, inquire about the status of the proceedings against them, and receive complaints or reports of any specific cases of ill-treatment. These visits are also carried out in detention centres for juveniles and women and in police institutions. By means of these visits, attempts are made to discourage any violation of the clear provisions and guarantees set forth in the Constitution.

Article 12

106. The legal provisions in force in Paraguay require the constituted authorities to ensure that practices of the kind in question are not carried out in any establishment. Mention may also appropriately be made of the manifest public interest in reporting any act which constitutes a breach of the constitutional provisions. Reports are readily received in any competent institution, namely, the Parliamentary Commission on Human Rights, the police public relations department and other organs competent to deal with cases. The only judicial action that may be taken is the following: (i) the immediate dismissal of any official who has committed an act of torture; and (ii) the investigation of the act reported, with the aim of punishing the person or persons convicted for it.

107. The Public Prosecutor's Department, under article 268 of the Constitution, is required to supervise the constitutional rights and guarantees established for the inhabitants of the country. Among these rights, numerous provisions establish respect for human dignity and the prohibition of torture. The function of the Public Prosecutors Department thus has to be a dynamic one in ensuring that action is taken on any complaint relating to human rights. It therefore includes among its personnel a procurator who deals with all matters relating to human rights.

Article 13

108. Any inhabitant of the country, either in person or through a third party, may contact any of the competent institutions in order to report acts of torture. The judicial proceedings currently under way require impartiality in the judgement of the acts reported; when the report or complaint is submitted, the investigation is opened and continues until a judgement in conformity with the national provisions relating to criminal proceedings is handed down.

109. The State Attorney-General's Office is currently studying a plan to set up a Protection of Victims and Witnesses Section. This section would monitor and effectively protect persons who have reported any criminal act, such as torture, and would guarantee, in the name of the State, their physical, mental and moral integrity. Judicial proceedings instituted in connection with acts of torture are conducted in complete normality, and the prosecution and the defence submit evidence that must be taken into account for the purposes of a judgement. Evidence leading to a conviction includes testimony by numerous witnesses incriminating persons suspected of committing or abetting an act of torture.

Article 14

110. Article 106 of the Paraguayan Constitution provides that no public official is exempt from responsibility and that, in the event of serious, ordinary or minor offences committed in the performance of his duties, a public official is personally responsible, without prejudice to the subsidiary responsibility of the State.

111. In Paraguay no claims have yet been made against the State, but in the event of such claims, under the Constitution and Convention, the principals would be obliged to provide redress for the injury caused and compensation,

being held responsible for the rehabilitation of any person who has been subjected to torture and, in the event of his death, for compensating his heirs.

112. In the operative part of the judgement handed down by the competent court in the Mario Shaerer Prono case, the court declared the guilty parties to be civilly liable, which has the effect of enabling the heirs to claim appropriate compensation in the civil courts.

Article 15

113. Constant and consistent jurisprudence supports the principle that no one is obliged to give evidence against himself. Consequently, it is self-evident that a statement obtained through torture may in no circumstances be used as evidence. Extrajudicial statements (for example, those made to the police) do not have legal status and as such may not be used as evidence against any person. In addition, a statement obtained through physical harassment on police premises is considered invalid by the court and, if a report of this nature comes to light, an independent investigation into the proceedings must be initiated in order to determine the perpetrator or perpetrators of the act in question. On the other hand, a statement made before a judge or magistrate is endowed with constitutional guarantees and is in conformity with the rules of criminal procedure, in which account must be taken of the right of the accused to refrain from making a statement, not to make a statement against himself and to have complete freedom to say whatever he wishes in his defence.

114. Charging a person with an act of torture in a responsible statement made in accordance with the national provisions in force is a legally valid act and as such is admitted as oral evidence in the proceedings.

Article 16

115. The precise provisions contained in article 4 (Right to life) and article 5 of the Constitution extend the prohibition of torture specifically to "cruel, inhuman or degrading punishment or treatment". The freedom and security of persons and their protection are provided for as an obligation of the State. No one is obliged to do what the law does not order or is forbidden to do what the law does not prohibit. Article 10 of the Constitution prohibits slavery, bondage and the slave trade. In addition, article 11 provides that no one shall be deprived of his physical freedom or tried without just cause or in a manner at variance with the conditions established by the Constitution and the laws.

116. Article 215 of the Bill submitted by the National Commission of Codification categorizes the offence of torture and extends its scope to "inhuman or degrading treatment". It establishes a penalty of three to eight years' imprisonment.

III. CONCLUSION

After more than three decades of authoritarian government, in February 1989 Paraguay began a genuine "process of democratic transition", whose cornerstone is full respect for human rights and fundamental freedoms,

as established in the provisions of the Universal Declaration of Human Rights and the conventions and covenants it has ratified.

The struggle to eradicate torture once and for all constitutes one of the highest priorities of the Government. Proof of this is the fact that it has also ratified the Inter-American Convention to Prevent and Punish Torture and the Pact of San José, Costa Rica, and has incorporated them into the legislation in force. It is also constantly engaged in human rights promotion activities and the training of law-enforcement personnel.

Various judicial proceedings are under way as a result of reports of torture by persons who held office before 3 February 1989. These proceedings are resulting in prison sentences for the persons found guilty of these acts.